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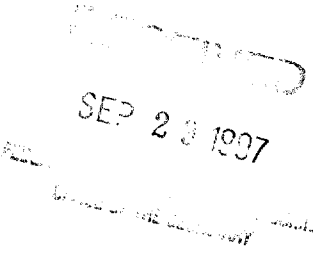

September 29, 1997

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Enclosed is an original, eleven copies, and a diskette copy of U S WEST's Reply Comments in CC 94-129. These Reply Comments are being filed in response to September 15, 1997 Comments to the Further Notice of Proposed Rulemaking released July 15, 1997. Please date stamp and return the duplicate copy also provided with this filing.

Should you have any questions regarding the diskette, please call me at the above number.

Sincerely,

Rebecca W. Ward

Rebecca W. Ward

Enclosure

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DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

SEP 29 1997

REPLY COMMENTS OF U S WEST, INC.

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September 29, 1997

TABLE OF CONTENTS

SUMMARY

U S WEST[1] herein encourages the Commission to focus its regulatory authority on carriers whose intentional or grossly negligent conduct correctly can be characterized as "slamming." Like other commentors in this proceeding, we encourage more aggressive enforcement with significant fines or forfeitures, and perhaps even referrals to the DOJ for criminal prosecutions.

As an embellishment to these types of aggressive enforcement actions, U S WEST supports those arguing for the imposition of additional regulatory burdens -- including monetary assessments -- on those carriers who demonstrate a repeated pattern of high levels of customer complaints (or disputes) around the matter of unauthorized carrier changes. Restricted verification options, additional employee training, Commission audits, are all appropriate regulatory remedial measures to impose on carriers where designated thresholds are exceeded. So, too, U S WEST believes are monetary assessments. Such assessments should operate as reimbursement to the regulatory authority that must operate overtime to deal with the complaints/disputes associated with what -- at least -- are shoddy, unreasonable carrier practices.

Beyond addressing these carriers, the Commission should seek to maintain the maximum flexibility regarding carrier solicitations, verifications and PC protections. In this regard, the Commission must reject those commentors seeking

[1] All acronyms or abbreviations used in this Summary are fully identified in the fuller text of this Reply. Commentors referenced herein are identified in Attachment 1.

to impose more burdensome solicitation, verification or PC protection requirements on LECs/ILECs than on other carriers. There is no evidence to suggest that such action would be in accord with Congressional intent. Indeed, just the opposite is true. Congress could have easily crafted a "two-tier" statutory approach to carrier change submissions and executions, but it chose language uniformly directed to all "telecommunications carriers." The Commission should follow this clear Congressional lead.

To maximize carrier flexibility with respect to the majority of the (well-behaving) industry, the Commission should modify certain of its existing rules to allow for more practical application of its prescribed verification options. Specifically, the welcome package option should be amended to allow for carrier identification only in those circumstances where the identification is known and the time allowed for mailing of the package should be extended from three to seven days. The electronic verification and 3PV options should be modified to eliminate the requirement that ANI be transmitted along with the call. There are real economic benefits associated with using these latter types of verification, and those efficiencies should not be lost due to rigid definition, particularly as there are better "unique identifiers" than ANI for subscriber identification.

The Commission should resoundingly reject a neutral third party administrator for carrier solicitations, verifications and PC protection. No commenting party presents compelling evidence that such an administrative bureaucracy is warranted. Given the fact that there would be obvious costs associated with such a bureaucracy, costs that would often have to be duplicated,

and the failure of supporting commentors to demonstrate that the benefits associated with such an administration exceed those costs, the notion should be rejected.

Finally, while U S WEST appreciates the Commission's position that Congress has materially added to the Commission's enforcement authority with the enactment of Section 258(b), U S WEST (as indicated in our opening Comments) is less sanguine in this regard. The Commission should seek to implement that Section with an eye toward the most practical applications and processes. It should avoid the establishment of elaborate regulatory mechanisms that overwhelm the fact that slamming (at least in the intentional sense) is an activity engaged in by a minority of carriers and affects a minority of subscribers.

All regulatory burdens (notices, demands, etc.) should be imposed on Slamming Carriers -- not Executing Carriers. Furthermore, the Commission should be aware of the fact that -- in many circumstances -- it will be less burdensome for a carrier to forgive charges than to secure billing detail for call re-rating. Thus, even in implementing the Congressional-required remedy, the Commission should allow for flexibility of process and carrier-to-carrier negotiations.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

REPLY COMMENTS OF U S WEST, INC.

I. INTRODUCTION

U S WEST, Inc. ("U S WEST") opposes those commentors that argue that incumbent local exchange carriers ("ILEC") should be burdened with any greater or different verification options than other carriers. In light of Congress' clear use of the term "telecommunications carriers" as the target of Section 258, it is inconceivable that Congress intended for the Commission to cull out ILECs as the targets of special or different treatment than that accorded any other class of carrier.[1] While forbearance from the imposition of Commission-prescribed rules is appropriate with respect to certain carriers (such as Commercial Mobile Radio Service Providers ("CMRS"),[2] the imposition of "superprotective" verification rules

[1] Clearly Congress knew how to make certain requirements applicable to ILECs, but not others, or to all local exchange carriers ("LEC") or only to Bell Operating Companies ("BOC"). See 47 U.S.C. §§ 251 and 272.

[2] U S WEST supports those commentors that argue for maximum flexibility for CMRS providers with respect to verification options (see, e.g., Airtouch at 2, 4), including the possibility of outright forbearance (see, e.g., BAM at 12-16). Compare Bell Atlantic at 2 n.3; 360 at 7-8 (Commission should clarify that CMRS providers

for ILECs is totally unwarranted. Particularly in the absence of any demonstrated ILEC "slamming" conduct, heavy-handed regulation is inappropriate to curb speculative market conduct.[3]

For these reasons, as well as others made more explicit below, we oppose suggestions that ILECs should be prohibited from using a welcome-package verification option,[4] should be the only carriers required to undertake inbound calling verification,[5] should be compelled to implement third-party verifications

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are not subject to the rules). Since interexchange services are generally an adjunct to CMRS services, and are largely determined by the CMRS provider as part of its service package, "slamming" has not been significant with respect to CMRS. That industry should not be burdened by regulations that will carry a cost but provide negligible market benefit.

Furthermore, U S WEST opposes the suggestion of the NC Public Staff that access services be included among the services addressed by the Commission's verification rules. NC Public Staff at 3. To the best of U S WEST's recollection, there have been no complaints about slamming with respect to access services. Thus, there is no need for a "remedy" in this area.

[3] With respect to interexchange services, the ILECs most probably already have a primary carrier ("PC") selection process that is at least somewhat separate from the retail organization. For example, at U S WEST, the Carrier organization processes PC changes, the overwhelming majority of which are transmitted electronically by carriers directly and which are trued up periodically through a "synchronization process." The process that is currently in place for unaffiliated interexchange carriers ("IXC") is the same process that a U S WEST Section 272 affiliate would utilize. The goal with respect to other services is to have a similar electronic capability. The technology alone reduces risks of discrimination or inappropriate action. Thus, we dispute CompTel's suggestion that the current structure creates "virtually irresistible opportunities . . . to engage in anticompetitive activities" (CompTel at 3, 14) and that of TRA that an ILEC "will have strong motivation to hinder or altogether prevent the carrier change by exploiting its position as the executing carrier" (TRA at 9).

[4] See, e.g., BIC at 6 (arguing that the welcome package operates as "a negative-option," but proposing that only ILECs be restrained from using it).

[5] See, e.g., id. at 5-6.

("3PV") as their only verification option,[6] or that ILECs (alone in the carrier industry) should be precluded from communicating with customers who leave their service.[7]

Because of the lack of any demonstrated need, and the assurance of substantial costs, we also oppose those commentors arguing for a neutral third party "gatekeeper" or "administrator" for all PC changes or carrier-selection protections.[8] Furthermore, we oppose the mandatory imposition of 3PV for all subscriber carrier selections and PC protection mechanisms. Just because some carriers prefer this method of verification does not warrant imposing on all carriers this specific form of verification. While mandated 3PV may be appropriate in circumstances of crafting a remedy for obvious abuses, carriers should not be

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[6] See, e.g., id. at 6; Intermedia at 5; MCI at 8; CompTel at 6-7, 10 (arguing that customers have a number of reasons to contact their ILEC -- specifically referencing repair, service and billing issues, and that such customers are "not similarly captured by IXCs and other competitors." This is a bizarre statement, since it is assumed that customers call IXCs and other competitors with whom they have an existing relationship for the same number of reasons that they might call an ILEC -- repair, service and billing issues. The CompTel observation that consumers typically dial an IXC telemarketing number with an intention to initiate a PC change seems counterintuitive, unless the IXC advertises a different number for "ordering" than for "customer service." In essence, CompTel defeats its own requested relief by failing to present any convincing evidence that an ILEC is dissimilarly situated from other carriers with respect to inbound calling.).

[7] See, e.g., WorldCom at 6; Time Warner at 4-6. It may be that these commentors only oppose the communication in advance of the switch from the ILEC to the new carrier, and have no concern about communications after the switch has actually been made (a difference discussed below). However, it is unclear from their comments.

[8] See note 92, infra. We use the word "protection" here because, as Ameritech has suggested, a customer's account is never "frozen" in a literal manner. Ameritech at 19 n.18. The subscriber always has the ability to change the protection or eliminate it entirely. See also SNET at 6-7.

deprived of the existing flexibility associated with PC verifications. Indeed, as argued by some commentors, that flexibility should be increased.

U S WEST supports those commentors who argue for increased, aggressive enforcement of carriers who intentionally and willfully slam customers.[9] Such enforcement action can take various forms ranging from those procedural types of actions suggested by Ameritech, to a "three strikes and you're out" approach as proposed by SBC, to the more monetarily punitive approach proposed by U S WEST, to referrals to the Department of Justice ("DOJ") for prosecution.[10] Whatever the form of the increased regulatory intervention in the business operations of bad-acting carriers that intentionally slam individuals, that increased intervention should remain targeted to those carriers.

The entire telecommunications industry should not be burdened by expensive, complex regulatory "answers" to a problem that, as Sprint and ACTA so well point out, can have various root causes.[11] "Unauthorized" conversions can result from inadvertence, human error, system errors, lack of clarity around carrier identifications, etc. While any unauthorized conversion might well be appropriately handled under Commission-prescribed rules that have as their foundation a "no fault"/make subscriber whole approach, excessively high numbers of claimed

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[9] See, e.g., Ameritech at 11-13; Bell Atlantic at 8; CBT at 2; Frontier at 2, 7-8; SBC at 1-2; Sprint at 7, 24-25; Time Warner at 2, 12 n.19; USTA at 6.

[10] Sprint at 25.

[11] Id. at 3-5; ACTA at 4.

unauthorized conversions should result in targeted, cumulative, increasingly-onerous consequences.

In considering either the situation of ILECs, Competitive Local Exchange Carriers ("CLEC") or IXCs, the Commission is best situated to craft PC selection/execution/verification rules if it keeps in mind that the majority of the players in the telecommunications industry operate with honesty and integrity; do not intentionally slam subscribers; and are innocent until proven guilty. As RCN so well put it, one must

> question[ ] whether it is necessary or appropriate to implement rules on the assumption that carriers engage in dishonest behavior or do not comply with the Commission's rules. . . . Drafting rules that are expensive, uneconomical, and unduly burdensome to carriers based on [such assumption] is tantamount to penalizing carriers for violations which they have not committed. Indeed, the broad reach of the Commission's proposed rule[s] will unnecessarily penalize carriers that do not engage in dishonest behavior. As drafted [the] [proposed] rule[s] discourage not only deceptive conduct, but also legitimate, reasonable and efficient marketing practices.[12]

In commenting on the filed comments, U S WEST's reply must be understood to reflect the concerns not just of an ILEC but a new market entrant. Thus, like ACTA, U S WEST is critically concerned about the cost of the Commission's proposed industry-wide regulations on small carriers and new entrants.[13] Proposals, for example, suggesting the elimination of the welcome package, mandated verification on all inbound calls, 3PV of all carrier choices/changes, the creation of a

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[12] RCN at 5-6. RCN remarks were specifically directed to the Commission's determination that verification should be applied to inbound calls. However, its remarks are generally applicable.

[13] ACTA, generally. And see ACTA's Comments Regarding the Commission's Regulatory Flexibility Analysis, generally.

national PC change/verification/protection entity clearly will impose costs on new entrants. U S WEST remains unconvinced that the incurrence of such costs will have any material or meaningful public interest or market benefit, particularly *vis-à-vis* carriers already determined to violate Commission policy and rules.

Thus, U S WEST asks that the Commission take a conservative approach to industry-wide regulation regarding PC changes, allowing carriers the greatest flexibility in practices and speech. Only in this way will the promise of the burgeoning competitive marketplace be realized.

Carriers affected by the Commission's rules should be prohibited from engaging in practices or speech that are deceptive (either affirmatively or by omission). They should be free to engage in otherwise lawful and constitutionally-protected speech. Carriers must be prohibited from intentionally converting an individual's carrier without an express authorization. But, the methods of securing express authorization should be multiple and adaptable to the particular circumstance. Carriers that violate the rules should be punished. Those cases where conversions are made that individuals claim are unauthorized but where an intention to slam are lacking should be handled through a "no fault"/make-whole approach as suggested by Section 258.

II. TARGETED ENFORCEMENT

Ameritech, SBC and U S WEST all presented various targeted models that could be used as tools to curb slamming conduct. Ameritech's proposal focuses largely on procedure and process. Thus, under its proposal, for those carriers who

persistently demonstrate high levels of slamming (above some unstated threshold),[14] multiple verifications methods might be required[15] and the ability to submit PC changes electronically would be eliminated, recording of conversations with subscribers might be mandated, employee training requirements and audit obligations might be imposed.[16] There is certainly merit in the Ameritech proposal. The lack of monetary retribution insulates the proposal from some of the anticipated attack that might be associated with either the SBC or U S WEST proposal as well as limiting the scope of regulatory enforcement initiatives.

The SBC and U S WEST proposal include monetary consequences. SBC's "three-strikes-and-you're-out" proposal allows for a probation period, once a carrier has achieved a 2% dispute (a word better suited to this type of approach than "complaint")[17] threshold per month. That probationary period can only last six

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[14] Ameritech at 11-13. As part of Ameritech's proposal, it suggests that LECs be required to submit quarterly reports showing the number of PC change orders submitted by each carrier, and the number disputed by end users. Id. As a general matter, U S WEST opposes being required to file such reports with the Commission. Reports of the nature described by Ameritech are already provided to IXCs. We believe that our proposal, which requires the IXCs to file the relevant information with the Commission is the more appropriate. See U S WEST at 22.

[15] OCC suggests something along the same lines. At the point where PC disputes reach a certain threshold, a carrier would be required to implement 3PV on all changes, or perhaps on a routine basis (i.e., every 25th call). OCC at 2.

[16] Ameritech at 11-12.

[17] Sprint argues that the "competitive marketplace provides ample incentives for IXCs to minimize their errors." Sprint at 11. This is undoubtedly true for most IXCs. However, it cannot be said to be true for all carriers. The use of "dispute" figures (while they will capture disputes associated with clerical errors, buyers' remorse, and spousal miscommunications) along with high enough thresholds appropriately crafted should weed out those carriers for whom competition is

months, and for a carrier having such status, certain internal processes would have to be attended to (much like the Ameritech proposal). After that probationary period, if the carrier continues to demonstrate a 2% dispute level, then significant fines per dispute would be imposed.[18]

U S WEST's proposal provides no probationary period, utilizes higher initial thresholds (5% and 10%) with the "allowable" thresholds decreasing over time, and imposes lesser fines for PC dispute incident ($100 and $250, respectively).[19] Thus, if a carrier's pattern of slamming did not decrease, the total amount of fines would increase over time.

The SBC and U S WEST proposal both incorporate the notion of "automatic assessments" of monetary retribution. For this reason, each is likely to be attacked on "due process" grounds.[20] While U S WEST has no doubt that such a model would be attacked on such grounds, we believe that the incorporation of a "strict liability" standard to the crafting of the model, as well as low monetary assessments per incidents, could alleviate this objection.

As U S WEST stated in our opening comments, and as is supported by other commentors, "slamming" should be viewed as an intentional act with some type of

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sufficient to create motivations to reduce the number of unauthorized conversions and those for whom it is not.

[18] SBC at 4-5.

[19] U S WEST at 19-20.

[20] Compare Ameritech at 13 (observing that its proposal would not be subject to such attacks because it lacked the "automatic fine" aspect).

mens rea requirement demonstrating culpability.[21] Where such is evident (such as in a forgery, or even demonstrated and repeated cases of proven bad conduct),[22] slamming carriers should be prosecuted and should be subject to significant fines under the Commission's fine and forfeiture authority. Jail sentences should also be considered.

Where the issue is transformed into one involving only "unauthorized conversions" (which implies a type of strict liability whenever a subscriber claims the conversion lacked requisite authority) and assessments for such disputed conversions are small and made only in circumstances which suggest *prima facie* at least negligent attention to sound business practice or consumer welfare, the assessment should not raise the kinds of due process issues that would render the proposal dead on arrival. The "per dispute" or "per incident" assessment could operate as an incentive to reduce the number of disputes -- whatever their cause -- and to operate as a type of recompense to the regulatory agency burdened by the continued market distress which increases the agency's costs of normal business operations every day.

For these reasons, we believe the U S WEST proposal is superior to the others offered. That proposal, however, certainly could be embellished with the specifics of the Ameritech proposal. The combination could prove very effective.

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[21] See, e.g., ACTA at 10.

[22] The latter phrase would include the representation of authorization in the absence of any action to secure authorization. It would not include "spousal" lack of communications, miscommunications, inadvertence, human error, etc.

B. Thresholds And Accuracy Of "Dispute" Figures

ACTA vigorously disputes the Commission's current methodology used to determine ratio of carrier slamming complaints.[23] U S WEST submits that the methodology suggested by SBC (and incorporated into U S WEST's proposal) is a better methodology, although it does require the addition of information that the Commission would not currently have easy access to, i.e., the number of processed PC changes per carrier per period of time (e.g., per month, per quarter, etc.).[24]

The information necessary to utilize this methodology could be provided by carriers in the reports that U S WEST suggests they be required to file with the Commission.[25] Along with this information, reporting carriers could "refine" the figures they report to identify those "disputes" that were the result of "buyers' remorse" "spousal miscommunication" and confusion over Carrier Identification Code ("CIC") assignments.[26]

Contrary to the claims of some carriers, the confusion over the use, by Switchless Resellers, of the CIC associated with the underlying facilities-based

[23] ACTA at 6-7 (where ACTA objects to the use of telecommunications-related revenue as a relevant factor in determining complaint ratios).

[24] SBC fashions its threshold by comparing PC disputes as a percentage of total PC changes. SBC at 1. This methodology was also what U S WEST had in mind in suggesting 5/10% thresholds (discussed above).

[25] U S WEST at 19 n. 36.

[26] See, e.g., Sprint at 3, 9-10 (reporting out its internal analysis of PC disputes and observing that often the ILEC reports of "disputes" reflect miscommunications and/or misunderstandings and not intentional slamming conduct).

carrier is not one of the ILECs' making.[27] Rather, the system itself creates this type of confusion.[28] It is, however, a confusion that can be "corrected" in reports submitted by affected carriers, since they are in the best position to know to which reseller the complaint related (or, at a minimum to know that the complaint did not

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[27] A number of commentors have pointed out the problem associated with Switchless Resellers. See, e.g., Sprint at 14; CompTel at n.3; Frontier at 4-5 and n.5; WorldCom at 19-20 (asserting that approximately 90% of the Commission's complaints brought to its attention are associated with such resellers); NC Public Staff at 4; VSCC at 2. And compare NYSCPB at 13 (addressing the matter within the context of PC protection); IL PUC at 5 (wants separate CICs because same one can defeat PC-protection when there is switching between the underlying network provider and reseller). This situation does create a problem with response to slamming disputes reporting. However, contrary to Sprint's suggestion at 14-15, this is not a LEC-created problem.

[28] U S WEST does incorporate the SRI indicator which Sprint references (at 14) with respect to routing and on our customer records. (It is unclear whether WorldCom is unaware of this or whether it does not consider the SRI to be a "pseudo-CIC." WorldCom at 19-20 (arguing that LECs should have to create such CICs). In any event, it seems clear that a "pseudo CIC" is not the solution to the problem.) However, the SRI -- while it does identify the existence of a Switchless Reseller -- does not identify the Reseller by name or other identifiable indicator. (Thus, Sprint's assumption that placement of that indicator on the customer record would allow an ILEC to "accurately identify the end users' service provider" (Sprint at 14 and 18) is incorrect. So too is CompTel's assumption that by checking information in the ILEC's "own databases," more accurate information could be provided. CompTel at n.3.) Thus, U S WEST is not in a position to identify to a calling customer the name of the entity, and the term "Switchless Reseller" means nothing. Thus, it is quite possible that the identity of the underlying carrier will be given to the customer as the entity to contact.

The only way in which this situation can be addressed at a systems level is to require Switchless Resellers to secure their own CICs. ILECs should not bear responsibility for the current state of the SRI or its limited value in reporting slamming disputes, as suggested by Sprint and CompTel (the latter alleging that separate CICs "would do much to alleviate problems created by [ILECs] use of . . . CICs that identify the underlying facilities-based IXC network but do not reveal the service provider"). Furthermore, as the Commission is only too-well aware, the moratorium on CICs that had been imposed as a matter of numbering conversation, undoubtedly contributed to this problem. Bellcore (not the ILECs) has been quite constrained in its ability to release CICs, pursuant to clear Commission directives.

related to them).[29]

III. VERIFICATION OPTIONS

U S WEST supports maximum flexibility in PC verifications. Thus, we support not only the retention of existing options (though perhaps modified) but we support the creation of additional options, as proposed by certain commentors.

We agree with the DMA that verification options should not be precluded because they can be abused or because the communications leading up to their use might be tainted by prior deceptive communications. If the latter, i.e., the content of the communication, then the latter should be addressed, not the medium or method by which the communication is delivered.[30]

A. Existing Options

1. Welcome Package

We support those arguing for the retention of the welcome package option.[31] We disagree with those who suggest that, despite the otherwise appropriate use of this verification option, the Commission might appropriately modify its rules to allow the use of this option only with respect to inbound calling[32] or preclude its use by a certain category of carriers.[33]

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[29] For example, ILECs report to IXCs (including facilities-based carriers) the number of PC disputes registered by the ILEC by CIC. In reporting that information to the Commission, an IXC (or other affected carrier) could back out that information (with appropriate explanation) from its reported dispute figures.

[30] DMA at 1-2, 3-4, 6-7.

[31] See, e.g., 360 at 3-4; ACTA at 24-26; AT&T at 4-8; Excel at 6; TRA at 11-12.

[32] LCI at 11-12.

[33] BIC at 6 (ILECs should not be permitted to use).

We agree with AT&T, however, that the option should be changed to some degree. While we do not support AT&T's suggestion that the "current carrier" identification be eliminated in its entirety, we do believe that the failure to include a carrier identification should not totally preclude the possibility of using a welcome package. To the extent that the new service provider knows the existing carrier with respect to each affected service[34] (either through conversation with the subscriber or through some system identification),[35] we believe such information should be included in the package.[36] If the information is not known, however, we do not think the package should be eliminated as an option because of the absence of information.

We support the AT&T position that a welcome package confirmation should be able to be sent within **seven** days of the consummated oral transaction, rather than three days. The three-day requirement currently included in the language of the rule itself could well "unnecessarily preclude[ ] carriers from using [this] option"

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[34] U S WEST believes the welcome package verification, like other communications between carrier and subscriber, should be required to break out the affected services and make clear that there will be a change in existing carrier for each service where that is a true statement.

[35] For example, with respect to reselling CLECs, because of the configuration of the Operating Support System ("OSS") a reseller, authorized by the customer to access the Customer Service Record ("CSR"), would often know that the ILEC was the current carrier or that CLEC1 was the current carrier.

[36] Thus, for example, if Carrier A is switching a subscriber from LEC1 and IXC2 to Carrier A's services, then Carrier A should have to identify both existing carriers. This is necessary to avoid the rampant confusion in the market over the switching of intraLATA toll services. See U S WEST at 24-28 and n. 52; Ameritech at 5-6, 8-9.

and, as AT&T notes the increase from 3 days to 7 is "modest."[37] Since a carrier utilizing this option would remain confined in its ability to send forward a carrier change for processing for 14 days after the mailing, there is only marginal harm to the subscriber from such an extension[38] and the additional time simply provides further opportunity for the individual to reflect on the previously-made decision.

2. Electronic Authorization Versus 3PV

In U S WEST's opening Comments, we advised the Commission that we had ceased using 3PV as a verification mechanism due primarily to dissatisfaction associated with the timeliness of the process.[39] Since the time of filing, however, the undersigned attorney has determined that U S WEST, in fact, currently does use 3PV.

The confusion in the drafting stemmed from the fact that the 3PV is done electronically, through a voice activated/prompted process, and -- in U S WEST's case -- involves an on-line transfer to a toll-free number, thus eliminating any delay in the verification process. Counsel incorrectly believed that the form of verification was "electronic authorization." The verification model, however, does not pass the Automatic Number Identification ("ANI"), as is required by the electronic verification model. Thus, as the Commission's rules are currently written, the

[37] AT&T at 7.

[38] As AT&T notes elsewhere in its comments and its Attached Affidavit, delays in processing subscriber requests can result in subscribers failing to realize the monetary benefits associated with a specific carrier's rates or calling plans. AT&T at n.50.

[39] U S WEST at 38.

method of authorization would not be electronic authorization but a 3PV.

BCI proposes, basically, to meld the electronic authorization option with the 3PV option.[40] The presentation of the BCI proposal appears quite benign and does not make clear the implications to carriers utilizing existing verification options.

The proposal suggests that there is something inappropriate about an on-line transfer to a third-party verifier where the ANI is not passed. The "problem" is not associated with carriers in general, but with "unscrupulous telemarketer[s]."[41] Despite the limited class of carriers identified as gaming the existing rules, BCI suggests that ANI be required to be passed to third-party verifiers, noting that it has incorporated this feature into its 3PV platform.[42]

Clearly, there are aspects of electronic authorization and 3PV that can be melded or merged. Indeed, if each incorporates the features of the other, the verification method can be claimed to be either. However, the Commission should not, by regulatory mandate, graft each feature of each method on the other. Certainly it should not do so in the absence of a demonstration that one model is seriously lacking in integrity.[43] For this reason, U S WEST does not support the BCI proposal.

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[40] BCI at 7-8.

[41] Id. at 7.

[42] Id. at 8.

[43] For example, U S WEST's preferred verification method -- which is a 3PV utilizing an on-line transfer and electronics, but not passing ANI -- has not proven to be unreliable or cumbersome. While ANI could be added to the method, its absence has not rendered the verification method lacking in integrity. Thus, U S WEST should not be required to add ANI to the method.

Nor do we support the proposal by Frontier that the electronic authorization verification method be eliminated.[44] Frontier offers little by way of analysis regarding its proposal, commenting only that it believes it is only "rarely used."[45] U S WEST does not believe that this casual observation should form sufficient evidence to warrant the removal of one of the existing verification options.

We do, however, support the Ameritech suggestion that the "electronic authorization" method be modified such that ANI need not be a component of the methodology at all.[46] Other information inputs should be permitted, as substitutions for ANI, as part of the verification process. Essentially, this modification would allow carriers currently utilizing 3PV as their verification method (because of the absence of ANI) to utilize electronic authorization in-house, saving the external costs now being expended. Moreover, to the extent the existing option requires a subscriber to independently dial a toll-free number, rather than to be the beneficiary of an on-line transfer to such a number, we believe the verification option should be modified to allow the latter to occur.[47]

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[44] Frontier at 15.

[45] Id.

[46] Ameritech at 22-23.

[47] This proposal should not be confused with the NAAG discussion of three-way calling, where a company employee remains on the line with the purported third-party verifier or the entity securing the electronic authorization. See NAAG at 17.

B. Inbound Calling Verification

U S WEST supports those commentors arguing that the imposition of verification requirements on inbound calling is unnecessary.[48] Such would do little in the way of incrementally improving the "slamming" situation and would only increase (perhaps quite substantially) the costs to carriers in processing customer PC subscription/change requests.

In light of the absence of any record evidence that "slamming" occurs in any significant numbers in the context of inbound calling, and the existence of evidence in the record that the costs associated with the implementation of a verification requirement in this context would be substantial, a Commission mandate extending verification obligations to such a context appears injudicious. To the extent that the Commission is concerned about those communications that might generate inbound calls in a deceptive manner, the Commission should regulate directly with respect to the deceptive aspect of the communications, as the DMA suggests.[49] It should not

[48] 360 at 3, 6; AT&T at 21-36; CBT at 7; RCN at 4-6; SNET at 8-9; Sprint at 30-33; USTA at 4-5, Working Assets at 5 (500,000 incoming calls without a single complaint or allegation of unauthorized change). Compare ACTA at 27 (proposing different types of verifications that might be appropriate to an inbound calling environment, such as a requirement that all pre-calling marketing materials clearly state that calling an advertised number might result in a change of carrier; requiring that such disclosure language be separate and apart from other solicitation communications; requiring that an affirmative statement of the change from existing to new carrier be included in an inbound calling scripting). With respect to the last ACTA suggestion, see U S WEST at 27-28 (proposing a "full and fair disclosure requirement that would be relevant to inbound calling) and NAAG at 12-15; NCL at 10 (both proposing the establishment of an umbrella rule against deceptive and misleading practices).

[49] DMA at 2, 3-4, 6-7.

saddle an entire industry with a ubiquitous regulation where a more targeted one would suffice.[50]

Finally, we particularly oppose the imposition of a verification obligation only on ILECs.[51] There is no record factual evidence that slamming would occur in an inbound calling environment involving an ILEC any more than it would in an environment involving an incumbent IXC. The facts simply do not bear out that such calling results in slamming conduct. Thus, no verification obligations should be imposed in the inbound calling context for any carrier.[52]

C. Recording Of Conversations

Some carriers suggest that the recording of conversations with subscribers is an acceptable verification option.[53] Presuming the carrier conforms its conduct to

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[50] Working Assets at 5 (suggesting that, at most, verification rules should only apply to carriers who utilize contests, sweepstakes, advertisements or other incentives that overshadow the offer of telecommunications services). Because U S WEST believes that it would be difficult and fact intensive to determine whether a carrier fell into this category in all contexts, we prefer the DMA approach that regulates the communication rather than the inbound call. Should the Commission reject the DMA approach, however, Working Assets presents an alternative, yet still targeted, form of regulation.

[51] WorldCom at 9; CompTel at 10.

[52] It is clear from the contexts that some carriers are interested in pursuing types of voluntary conduct that might resemble or might replicate the inbound calling verification. Thus, for example, SBC advises that it sends out a welcome package, yet it supports the elimination of this option as a compliant form of verification. SBC at 7. See also ACTA at 27. Other carriers advise that recording inbound calls provides certain protections (GTE at 10; IXCLD at 3-4), yet inbound call recording is not, currently, a *bona fide* verification option. Obviously, no carrier should be precluded from incorporating verification actions into its business practices.

[53] IXCLD at 3-4; GTE at 10 (noting the propriety of doing such a recording but not actually asking for a rule change to allow for such conduct). While this proposal is

the Commission's existing rules regarding the recording of conversations,[54] and any applicable state rules in this area, such recording should be added as a permissible verification option.

D. Mandated 3PV¶

MCI argues strenuously for mandated 3PV for all carriers,[55] in all circumstances (including inbound calling -- a change from its earlier position on the application of verification requirements to inbound calls).[56] Failing that, it argues that 3PV is the only verification that should be permitted for ILECs.[57]

While 3PV may prove the best verification method for a carrier, as a result either of voluntary use of that method or after nudging from a regulatory agency,[58] it should not be mandated for all carriers in all circumstances. No verification should be necessary, as argued above, for inbound calls. But, if the Commission remains resolute in imposing such verification, carriers should have options with respect to what verification they use (e.g., a modified welcome package option).

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sometimes made in a specific context (such as with inbound calling), the propriety of the use does not seem logically confined to such context.

[54] 47 C.F.R. § 64.501.

[55] MCI at 4-5. BCI proposes that only two verification methods be permitted with respect to telemarketing, either a written Letter of Agency/Authorization ("LOA") (which it acknowledges will not very often be secured) or 3PV. BCI at 3-6.

[56] MCI at 10.

[57] Id. at 8. ACTA also argues that, if the Commission declines to appoint a third-party neutral administrator for PC subscriptions/changes, that it should require 3PV from ILECs processing carrier change orders. ACTA at 19.

[58] MCI notes that it increased its 3PV use as the result of a Consent Decree which it entered into with the Commission. MCI at 4 n.5.